(2) *Cassidy & Co.* v. *M'Aloon* 32 L.R. Ir. 368.

SUMMONS IN CHAMBERS

Yeoh Kian Teck for the plaintiffs.

P. P. Dharmananda for the defendants.

Syed Sheh Barakbah J.: In this suit there are two applications made by way of Summons in Chambers, one by the plaintiffs for leave to enter judgment and the other by the defendants for an order that the service of the Writ of Summons and all subsequent proceedings be set aside on the ground that the Statement of Claim was not signed by the plaintiffs' solicitors.

At the hearing I decided to deal with the defendants' application first.

Mr. Dharmananda, for the defendants, contended that the Statement of Claim must be signed by the solicitors and referred to O. 3 r. 6 of the Rules of the Supreme Court (Annual Practice 1957, page 18) where it is stated "The omission of the words 'Statement of Claim' at the head, and the signature at the end, as shown in the skeleton form of specially indorsed writ and required to a pleading by O. 19 r. 4, were held by the Irish C.A. to be fatal defects."

O.19 r.4 says, "Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Signature of counsel shall not be necessary; *but where pleadings have been settled by counsel or a special pleader they shall be signed by him; and if not so settled they shall be signed by the solicitor, or by the party if he sues or defends in person,*" and on page 338 of the Annual Practice 1957, it is stated that a pleading not signed is not a pleading "delivered" within the meaning of the Rule, so if an unsigned statement of claim is delivered, it is a mere nullity, and if there is an apparent default in delivery of defence, the plaintiff will sign judgment in default at his own risk. A pleading includes a statement of claim — O.71 r.1(10). According to O.28 r.1, a special indorsement is really a statement of claim and the practice with reference to the amendment of pleadings therefore applies to it.

Mr. Yeoh argued that a specially indorsed writ is not a pleading on the authority of *Murray & anor.* v. *Stephenson,*[1] and therefore O. 19 r. 4 does not apply. But what that case decided was that it was not a pleading within the meaning of O. 64 r. 11 in so far as it relates to the time of service, but the issue before me is whether or not the writ should be signed by counsel. On this latter point the Irish Court of Appeal in *Cassidy & Co.* v. *M'Aloon,*[2] has held that the omission of the signature of counsel was a fatal defect. I am inclined to agree with that decision and hold that the writ in the present case is a nullity as it was not signed by counsel.

The Writ of Summons is set aside without prejudice to the plaintiffs bringing fresh action. No order as to costs.

Application allowed.

Solicitors: *Gibb & Co.; Cheang, Lee & Ong.*

CHEANG CHAN as CHAIRMAN OF PERAK KWONG SAI ASSOCIATION v. LEE KIN KOK

[O.C.J. (Neal J.) August 22, 1959]

[Ipoh — Civil Suit No. 142 of 1959]

Practice and Procedure — Writ of Summons — Not signed by counsel — When not a nullity — R.S.C. 1957 O.2 r.1, O.3 r.1 and O.19 r.4.

In this suit the defendant applied by way of Summons in Chambers for an order that the Writ of Summons and all subsequent proceedings be set aside on the ground that the Statement of Claim was not signed by the plaintiff's solicitors. The Writ was a Writ under O. 2 r. 1 with a statement of the nature of the claim endorsed and purported to have been signed by the plaintiff.

Held: the writ issued in this case was not in breach of O. 19 r. 4 and complied with the Rules of the Supreme Court.

Cassidy & Co. v. *M'Aloon* and *Maclaine Stokvis (Malaya) Ltd.* v. *Saloma Co.*[1] distinguished.

Cases referred to:—

(1) *Maclaine Stokvis (Malaya) Ltd.* v. *Saloma Co.* [1959] M.L.J. 241.

(2) *Cassidy & Co.* v. *M'Aloon* 32 L.R. Ir. 368.

(3) *Anlaby & Ors.* v. *Praetorius* 20 Q.B.D. 764.

(4) *Murray* v. *Stephenson* 19 Q.B.D. 60.

SUMMONS IN CHAMBERS.

Khong Kok Yat for the plaintiff.

Yeoh Kian Teck for the defendant.

Neal J.: A Summons in Chambers in the suit for an order that the Writ of Summons herein and all subsequent proceedings be set aside on the ground that the Statement of Claim was not signed by the plaintiff's solicitors and that the plaintiff do pay to the defendant the costs of and occasioned by this application, was heard before me in Chambers on the 17th August.

Mr. Yeo Kian Teck, appearing in support of the Summons, argued that the judgment of Mr. Justice Syed Sheh Barakbah in *Maclaine Stokvis (Malaya) Ltd.* v. *The Saloma Company*[1] (Civil Suit No. 9 of 1959) was authority for his submission that the service must be set aside as the plaintiff had not complied with the mandatory provisions of O. 19 r. 4 as regards signature of the endorsement by the solicitors on record such endorsement being signed by the plaintiff in person.

Mr. Khong Kok Yat, in reply, argued that O. 19 r. 4 had no application and that it was sufficient compliance with the Rules of the Supreme Court if the endorsement was signed by the plaintiff or his solicitor.

It is, in my opinion, relevant to note at this stage that the writ was a simple form of writ under O. 2 r. 1 with a statement of the nature of the claim endorsed and not a specially endorsed writ pursuant to O. 3 r. 6, whereas the writ dealt with by Mr. Justice Syed Sheh Barakbah in Civil Suit No. 9/59[1] was such a specially endorsed writ.

In Civil Suit No. 9/59[1] Mr. Justice Syed Sheh Barakbah relied upon the decision of the Irish Court of Appeal in *Cassidy & Co.* v. *M'Aloon,*[2] as reported in the 1957 Annual Practice, page 18. This report is not available to me but it is obviously based upon an interpretation of the last sentence of O. 19 r. 4, the applicability of which depends upon whether or not the endorsement is a pleading. This question came before the Court of Appeal in *Anlaby & Ors.* v. *Praetorius,*[3] where Fry L.J., said at page 768:—

"We have, therefore, to consider whether a statement of claim was delivered in this case. If it was not, the time for delivering the defence ran from January 26, and the judgment was regular. I am of opinion that a statement of claim was delivered by the plaintiff when the writ was served on the defendant. Order xx, r. 1, I think, determines the point. It is: 'Where the writ is specially indorsed under Order III, r. 6' (which was the case herein), 'no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim.' The words 'no further statement of claim shall be delivered,' imply that the indorsement is a statement of claim, and the succeeding words make it still more clear by providing that the indorsement 'shall be deemed to be the statement of claim.' I am clearly of the opinion that the indorsement on the writ was a statement of claim, and, therefore, that rule 6 of Order XXI applied to the case."

With this statement of the law, Lopes L.J., agreed, at p. 770.

In the case before me, as was pointed out by Mr. Khong Kok Yat in his reply, the writ was a simple one issued under O. 2 r. 1 with an endorsement containing a statement of the nature of the claim made. In my opinion, the only interpretation to be placed upon O. 19 r. 4, read in conjunction with the remainder of the Order and the other Orders in the Rules of the Supreme Court, 1957, is that it applies only to pleadings. It has been held in *Murray* v. *Stephenson,*[4] that a writ is not a pleading. It should also be noted, as pointed out by Mr. Khong Kok Yat, that in the case before me the plaintiff has filed a separate Statement of Claim which complies with O. 19 r. 4. The writ with an endorsement of the nature of the claim complies, in his submission, with O. 3 r. 1, which latter rule differs from the English equivalent in that it has in addition "and shall be signed by the plaintiff or his solicitors." It is relevant to note that the wording of rule 1 differs from the relevant part of O. 19 r. 4, which latter permits signature by a party only if he sues or defends in person. I am of the opinion that the writ issued in this case is not in breach of O. 19 r. 4 and complies with the Rules of the Supreme Court. Although the defendant, in his supporting affidavit, alleges that the Statement of Claim ought to have been signed by the plaintiff's solicitors whereas in fact it purports to be signed by the plaintiff, there is nothing on the writ itself which refers to the endorsement as a Statement of Claim. In my opinion, the decision of the Irish Court of Appeal and that of Mr. Justice Syed Sheh Barakbah in Civil Suit No. 9/59[1] are clearly distinguishable and not applicable to the writ before me.

The application is, therefore, dismissed. Costs to the plaintiff as taxed by the Senior Assistant Registrar.

Application dismissed.

Solicitors: *Khong & Son; Gibb & Co.*

CHONG FONG KOOI
v. KONG GIM HEM (m.w.)

[C. A. (Thomson C.J., Good and Smith JJ.) March 10, 1959]

[Penang — F.M. Civil Appeal No. 52 of 1958]

Landlord and Tenant — Sub-tenancy — Arrears of rent — Rent "lawfully due" as distinct from stipulated rent — Apportionment of rent — Subsequent order of Rent Board fixing appropriate rent — Not retrospective — Control of Rent Ordinance, 1956, ss.8, 12, 15 and 18.

The tenant in this case sublet a portion of the premises in question at an agreed rent of $60 a month while she herself paid a monthly rent of $63.25. The sub-tenant for a time regularly paid the stipulated rent, but at the beginning of September 1957 he was in arrears with three months' rent. The tenant thereupon terminated the sub-tenancy by giving notice to quit on September 4, refused tenders of rent that were made thereafter and on November 13 commenced proceedings asking for possession, alleging that the sub-tenant had lost the protection of the Control of Rent Ordinance on September 4 when "rent lawfully due" had been in arrear for upwards of 14 days. In the course of the proceedings before the Sessions Court the matter was referred to the Rent Board and the Board then determined the appropriate rent to be $53.80.

Held: (1) rent "lawfully due" under the Control of Rent Ordinance means rent which is not forbidden by the terms of the Ordinance itself;

(2) by section 15 of the Ordinance where there has been a sub-letting of premises the maximum recoverable rent of the portion sub-let may either be an amount determined by the Rent Board under section 8 or section 16 or, where there has been no such determination then it is an amount arrived at in accordance with a formula laid down by section 15(b) — in this case it was agreed it would be $8.69;

(3) as the Rent Board has no power to make any order relating to the amount of rent retrospective, the recoverable rent prior to the Board's order was the amount arrived at by operation of the formula laid down by section 15(b), and is the only rent "lawfully due";

(4) applying that principle to the present case, the tenant as on September 4, had since the commencement of the Ordinance paid by way of rent a sum very much in excess of the maximum total amounts of rent recoverable under the provisions of the Ordinance. Therefore on that date rent lawfully due as distinct from stipulated rent was not in arrears for 14 days or indeed in arrears at all, and it follows that he was still entitled to the protection of the Ordinance.